APPEAL NO. 160147
FILED MARCH 22, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 19, 2015, with the record closing on January 5, 2016, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to an L4-5 disc herniation, L5-S1 disc herniation, lumbar radiculopathy, and disc bulges at C4-5 and C5-6; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 11, 2015; (3) the claimant's impairment rating (IR) is zero percent; and (4) in accordance with the parties' stipulation, the claimant's average weekly wage (AWW) is $1,065.84.

The claimant appealed the hearing officer's extent of injury, MMI, and IR determinations, contending that the evidence established the compensable injury extended to the claimed conditions and therefore he has not reached MMI. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

The hearing officer's determination that in accordance with the parties' stipulation, the claimant's AWW is $1,065.84 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), in the form of at least a cervical and thoracic sprain/strain, and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. D), as designated doctor on extent of injury, MMI, and IR. The claimant testified that he was injured when a service gate slammed down on his back while he was backing into an elevator.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to an L4-5 disc herniation, L5-S1 disc herniation, lumbar radiculopathy, and disc bulges at C4-5 and C5-6 is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the claimant reached MMI on July 11, 2015, with a zero percent IR. The hearing officer stated in the Discussion portion of the decision that "[Dr. D's] determination that [the] [c]laimant reached [MMI] on July 11, 2015, with a [zero percent IR] is supported by the preponderance of the other medical evidence." The hearing officer also indicated in the Decision and Order portion of the decision that she determined the claimant reached MMI on July 11, 2015, with a zero percent IR based upon Dr. D's MMI/IR certification.

However, the hearing officer found in Finding of Fact No. 5 that Dr. D's MMI/IR certification is contrary to the preponderance of the other medical evidence. The hearing officer also found in Finding of Fact No. 6 that the MMI/IR certification from (Dr. B), the post-designated doctor required medical examination (RME) doctor, is supported by the preponderance of the evidence.

Dr. D initially examined the claimant on July 11, 2015, and certified that the claimant reached MMI on that same date. Using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), Dr. D placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints and Symptoms, and DRE Thoracolumbar Category I: Complaints and Symptoms for zero percent impairment. In his attached narrative report Dr. D also discussed the claimant's lumbar spine. We note that the parties neither stipulated to nor actually litigated a condition to the lumbar spine.

The hearing officer sent Dr. D a letter of clarification to inquire whether his Report of Medical Evaluation (DWC-69) and narrative report were inconsistent. Dr. D responded on December 16, 2015, and again certified that the claimant reached MMI on July 11, 2015, with a zero percent IR. Dr. D makes clear in his certification that he based his MMI/IR certification on the accepted cervical and thoracic strains. Dr. D's MMI/IR certification is supported by sufficient evidence.

Dr. B, the RME doctor, examined the claimant on October 26, 2015, and also certified that the claimant reached MMI on July 11, 2015, with a zero percent IR. Dr. B opined that the claimant "may have" sustained a cervicothoracic strain, and therefore placed the claimant in DRE Cervicothoracic Category I: Complaints or Symptoms for zero percent impairment. We note that page 3/95 of the AMA Guides states that for purposes of the AMA Guides, the cervical region may be considered to represent the Cervicothoracic region, the thoracic region to represent the Thoracolumbar region, and the lumbar region to represent the Lumbosacral region. *See* Appeals Panel Decision (APD) 051306-s, decided August 3, 2005; APD 150558, decided May 8, 2015. The hearing officer correctly noted in her discussion that Dr. B based his IR on DRE Cervicothoracic Category I without consideration of any DRE Thoracolumbar Category.

It is clear from the hearing officer's decision and order and discussion that she based her determination that the claimant reached MMI on July 11, 2015, with a zero percent IR on the MMI/IR certification from Dr. D, the designated doctor, and that the hearing officer inadvertently found that Dr. D's MMI/IR certification was not supported by a preponderance of the evidence. As noted above, Dr. D's MMI/IR certification is supported by the evidence, and the MMI/IR certification from Dr. B, the post-designated doctor RME doctor, does not rate the accepted thoracic strain in accordance with the AMA Guides. Accordingly, we reform Findings of Fact Nos. 5 and 6 as follows to conform to the hearing officer's Decision and Order and Discussion sections and the evidence:

> 5. Dr. D's MMI/IR certification that the claimant reached MMI on July 11, 2015, with a zero percent IR is supported by the preponderance of the other medical evidence.
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> 6. Dr. B's MMI/IR certification that the claimant reached MMI on July 11, 2015, with a zero percent IR was not made in accordance with the AMA Guides.

We affirm the hearing officer's determination that the claimant reached MMI on July 11, 2015, with a zero percent IR.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge